

BEFORE THE WASHINGTON DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF GEOLOGY AND EARTH RESOURCES

In the Matter of

The Surface Mine of:

EMERGENCY ORDER TO  
SUSPEND SURFACE MINING

SDS Lumber Company

Reclamation Permit No. 70-010889.

The Washington Department of Natural Resources (DNR) issues the following Findings of Fact and Conclusions of Law:

**FINDINGS OF FACT**

1. SDS Lumber Company is the holder of Reclamation Permit Number 70-010889 issued under chapter 78.44 RCW. The surface mine that is the subject of the permit is located at 0.2 miles north of Highway 14, just east of Bingen, WA.

2. On 2/3/09 at 4:00 PM, DNR inspected SDS Lumber Company's surface mine. DNR observed the following:

- a. Mining has occurred outside the permit boundary in violation of the approved reclamation plan, the reclamation permit, and RCW 78.44. 2008 aerial photos with ownership boundary overlain demonstrate disturbance outside the north boundary of the permit (Exhibit 1). Further, DNR's surface mining inspectors observed an active landslide in the same area as the mined area outside the permit area (Exhibit 1).
- b. This mining has impacted the integrity of the mined slope creating a steep mined face that has failed outside the permit boundary (Exhibit 1). Large boulders, soil, and rock fall were observed moving/rolling down slope during the site inspection conducted 2/3/09. The north edge of the working face has failed onto the adjacent

land owner's property outside the current permit boundary. Debris from the landslide has filled the upper cut face and is being delivered directly down slope to the quarry floor (Exhibit 1). A 5.5 acre area of landslide debris is moving toward the working face and will impact the working quarry floor and potentially the surrounding area containing multiple homes and State Highway 14. State Highway 14 is located 650 feet south of and down slope from the south permit boundary.

3. The deficiencies described above pose an immediate danger to the public health, safety or welfare, or the environment, in that:

Mining outside the north permit boundary has undermined the slope, the slope has failed, triggering a landslide that threatens public safety. Under cutting and over steepening of the slope within the permit boundary has resulted in slope failure outside the permit boundary. Rock, soil, and debris are actively falling downslope in close proximity to residences, State Highway 14, and to employees who were operating a crusher at the toe of the slope within the permit boundary at the time of DNR's inspection. Voluntary evacuations of residences in close proximity to the landslide have occurred.

4. An emergency suspension of SDS Lumber Company's surface mining is required to rectify the immediate danger posed by the deficiencies described above because continued rock extraction or crushing will exacerbate the slope's instability, making the conditions more dangerous. A slope failure or rolling boulder would threaten the built environment below (roads or buildings) and the health and safety of employees or members of the public.

5. Any Findings of Fact found to be Conclusions of Law shall be deemed as such.

## **CONCLUSIONS OF LAW**

1. Under RCW 78.44.200, DNR may issue an Emergency Order to Suspend Surface Mining when a miner or permit holder is conducting surface mining in any manner not authorized

by RCW 78.44, WAC 332-18, or their approved reclamation permit (which includes the reclamation plan) and that activity has created a situation involving an immediate danger to the public health, safety, welfare, or environment requiring immediate action.

2. SDS has conducted unpermitted surface mining in violation of the Surface Mining Act. RCW 78.44.081 requires miners to obtain a permit before surface mining. Surface mining outside of a permitted area constitutes illegal mining without a valid reclamation permit. RCW 78.44.260. The unpermitted surface mining described in Finding of Fact No. 2 establishes that SDS has violated RCW 78.44.081 and RCW 78.44.260.

3. Because of the conditions described in Finding of Fact No. 2 and Conclusion of Law 2, SDS Lumber Company is conducting surface mining in a manner not authorized by:

- a. Chapter 78.44 of the Revised Code of Washington (RCW);
- b. SDS Lumber Company's authorized reclamation permit, which includes the approved reclamation plan.

4. The conditions described in Findings of Fact Nos. 1 through 4 are sufficient grounds for emergency action under RCW 78.44.200. Unpermitted surface mining has created conditions posing an immediate danger. The instability of the slope face as evidenced by soil movement and the boulders rolling down the hillside pose an immediate danger to the health, safety, and welfare of on-site employees, off-site residents and members of the public, and to the surrounding built environment. These conditions warrant immediate corrective action.

5. RCW 78.44.250 authorizes DNR to assess civil penalties when a miner or permit holder has failed to comply with a DNR order.

6. Any Conclusions of Law found to be Findings of Fact shall be deemed as such.

## **ORDER**

Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby **ORDERED:**

1. That SDS Lumber Company must, regardless of appeal, immediately suspend the following surface mining activities:

No surface mining or crushing of any rock within this permit or the area directly adjacent to and outside the north permit boundary is to occur without the express written consent of DNR. SDS Lumber Company is permitted to remove the crusher plant and any other mine equipment located within the permit boundary as long as no further disturbance or removal of rock occurs during the extraction of equipment.

2. SDS Lumber Company must submit to DNR, within 30 days, a geotechnical report assessing the condition of the slope and recommending alternatives to obtain adequate slope stability.

3. SDS Lumber Company must submit to DNR, within fifteen days of the geotechnical report, an acceptable plan for removing the immediate danger posed by slope instability. This plan must include a reasonable schedule for the work to be completed and must be consistent with RCW 78.44 and other relevant laws. If approval of a plan is obtained, SDS Lumber Company shall comply with the plan's schedule.

#### **Notice of Further Consequences for Noncompliance**

In addition to civil penalties, DNR may issue a Suspension of your Reclamation Permit under RCW 78.44.210 if you fail to comply with this Order. Further, the Attorney General may take the necessary legal action to enjoin, or otherwise cause to be stopped, surface mining in violation of this Order.

#### **NOTICE OF APPEAL RIGHTS**

If you disagree with this Order, you may appeal it by applying for a hearing to DNR. If you decide to apply for a hearing, you must specify the factual basis for your appeal in writing. **You must file your written application for a hearing with DNR at the following address within thirty (30) days of DNR's "service" of this Order** ("Service" includes depositing in U.S. Mail or personal service. RCW 34.05.010(19). "Filing" occurs when the Department *receives* the necessary document. See RCW 34.05.010(6).):

ATTN: Regulatory Programs Manager  
Division of Geology and Earth Resources  
Department of Natural Resources  
P.O. Box 47007  
Olympia, WA 98504-7007

Upon **receiving** your appeal, DNR will arrange for an administrative hearing. The provisions of RCW 34.05.479, RCW 34.05.413 through RCW 34.05.476, and WAC 332-08.

If DNR does not **receive** your appeal within thirty (30) days of DNR's "**service**" of this Order, this document will become DNR's final order.

DATED this 3th day of February, 2009.

DEPARTMENT OF NATURAL RESOURCES

By Lorraine Powell

Title Surface Mine Reclamation Inspector

I certify that I served this ***Emergency Order to Suspend Surface Mining*** upon the miner or permit holder to whom it is issued by:

X Sending it to the miner or permit holder by email and certified mail on February 4, 2009. Certified mail number 7008 1140 0002 6881 6684

SIGNED this 4th day of February, 2009.



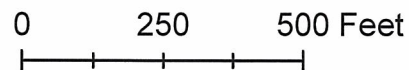
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**SDS Lumber Co**  
**Emergency Stop Work Order**  
**#09-001**

Permit Number: 70-012028  
 Air photo date: May 15, 2008



**Explanation**

-  Aug. 2008 and Feb. 2009 failed area
-  Klickitat County Parcel Data
-  Area of disturbance drawn from air photo

February 3, 2009



WASHINGTON STATE DEPARTMENT OF  
**Natural Resources**  
 Peter Goldmark - Commissioner of Public Lands



**Exhibit 1**